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15 UNITED STATES DISTRICT COURT  
16 NORTHERN DISTRICT OF CALIFORNIA

18 JAMES PORTER, BRYAN PEREZ, DRO  
19 ESRAEILI ESTEPANIAN, DENNIS  
20 ROMANEZ, ARTEM KUPRIETS, NEIL  
21 KREUZER, WAFAY NADIR, and KENNETH  
22 BROWN, on behalf of themselves and all  
23 others similarly situated,

24 Plaintiffs,

25 v.

26 TESLA, INC.,

Defendant.

Case No. 4:23-cv-03878-YGR

**26(F) REPORT AND CASE  
MANAGEMENT CONFERENCE  
STATEMENT [FED. R. CIV. P.  
26(F)(2); N.D. CAL. CIV. L.R. 16-9]**

Judge: Hon. Yvonne Gonzalez Rogers  
CMC: November 6, 2023  
Time: 9:30 a.m.

1 Plaintiffs James Porter, Bryan Perez, Dro Esraeili Estepanian, Dennis Romanez, Artem  
 2 Kupriiets, Neil Kreuzer, Wafay Nadir, and Kenneth Brown (“Plaintiffs”) and Defendant Tesla,  
 3 Inc. (“Tesla”), jointly submit this 26(f) Report and Case Management Conference Statement  
 4 pursuant Fed. R. Civ. P. 26(f)(2) and the Standing Order for All Judges of the Northern District of  
 5 California and Civil Local Rule 16-9.

6 **A. Jurisdiction and Service**

7 *Plaintiffs’ Statement*

8 Plaintiffs filed and served their Class Action Complaint, ECF No. 1, on August 2, 2023,  
 9 and filed their First Amended Class Action Complaint (“FAC”), ECF No. 35, on October 23, 2023.  
 10 Plaintiffs do not believe that any outstanding issues exist regarding personal jurisdiction, service  
 11 of process, and venue. And there are no unserved defendants. Plaintiffs believe that this Court has  
 12 subject matter jurisdiction to adjudicate the claims raised in the FAC. Jurisdiction in this case is  
 13 based on 28 U.S.C. § 1332(d). The aggregated claims of the individual class members exceed the  
 14 sum or value of \$5,000,000.00, exclusive of interest and costs; there are more than 100 putative  
 15 class members; and at least one putative class member is from a state different from Tesla.

16 *Defendant’s Statement*

17 Tesla contends Plaintiffs cannot meet their burden of demonstrating subject matter  
 18 jurisdiction. Plaintiffs’ claims, if they chose to pursue them, belong in arbitration pursuant to  
 19 applicable arbitration agreements. Plaintiffs’ claims are also preempted by federal law. In  
 20 addition, Tesla disputes that any Plaintiff has experienced a cognizable injury or can otherwise  
 21 satisfy the requirements for Article III standing.

22 **B. Facts**

23 *Plaintiffs’ Statement of Facts*

24 Plaintiffs, individually and on behalf of a putative nationwide class and California, Florida,  
 25 Illinois, Massachusetts, New York, and Washington state classes, allege that Tesla falsely  
 26 advertised the range capabilities of its electric vehicles. Plaintiffs allege that the advertised range  
 27 of Tesla model vehicles are exaggerated and not based on normal driving conditions, and that  
 28 Tesla’s advertising of the range capabilities of its vehicles fail to warn consumers of these facts.

1 (Am. Compl. ¶¶ 67, 72, 112-14). These facts, as alleged, track information reported in a July 27,  
 2 2023 *Reuters* article. (*Id.* ¶ 68). Plaintiffs also allege that Tesla, in fact, uses algorithms in its  
 3 vehicles' software to present "rosy" and exaggerated range projections to the driver. (*Id.* ¶¶ 69-71,  
 4 116). As Plaintiffs allege, Tesla was aware that its vehicles' range capabilities fell below the range  
 5 capabilities advertised to consumers. (*Id.* ¶¶ 112-13, 117-18). Had Tesla truthfully revealed that  
 6 the advertised range capabilities of its vehicles were exaggerated and/or not based on normal, real-  
 7 world driving conditions, consumers—including each of the named Plaintiffs—would not have  
 8 purchased their Tesla vehicles, or else would have paid substantially less for them. (*Id.* ¶¶ 125,  
 9 137, 149, 160, 172, 184, 197, 211, 221).

10 Additionally, as Plaintiffs allege, Tesla took steps to summarily dispose of customer  
 11 complaints expressing concern or dissatisfaction with the range experienced in their vehicles, as  
 12 compared to the exaggerated range capabilities Tesla advertised. (*Id.* ¶¶ 90-101). When driving  
 13 under normal conditions, Tesla vehicle owners regularly received ranges below the advertised  
 14 range capabilities. As customers grew concerned that their vehicle may be defective or be in need  
 15 of repair, customers used Tesla's app to voice complaints and to schedule service appointments.  
 16 (*Id.* ¶¶ 6, 88). However, as Plaintiffs allege, Tesla faced so many such complaints and service  
 17 requests that it created a "Diversion Team," whose sole purpose was to "divert" customers away  
 18 from service appointments and summarily dispose of range-related complaints. (*Id.* ¶¶ 91-92). The  
 19 "Diversion Team" ran remote diagnostics, explained to customers that their complaints were not  
 20 valid, and refused and canceled customers' requested service appointments. (*Id.* ¶¶ 93-95).  
 21 Plaintiffs allege that, through this practice, Tesla refused to confirm whether a complaining  
 22 customer's vehicle was defective when they voiced concern about the range they experienced. (*Id.*  
 23 ¶¶ 100-01). Plaintiffs allege that this behavior violated Tesla's various warranties. (*Id.* ¶¶ 102-11).

24 Plaintiffs disagree that this forum is inappropriate for adjudicating their claims. The  
 25 determination whether to arbitrate Plaintiffs' claims outside this forum is a fact-specific inquiry,  
 26 and Plaintiffs contend that arbitration may be inappropriate. Plaintiffs disagree with Tesla's  
 27 contention that their claims "lack merit" or that any of their claims are preempted by applicable  
 28 federal law.

1                   *Defendant's Statement of Facts*

2                   Plaintiffs' lawsuit challenges Tesla's EPA-approved estimates regarding the driving range  
 3 of its electric vehicles. The testing and disclosure of estimated fuel economy and vehicle ranges  
 4 for new vehicles sold in the United States are governed by a comprehensive federal regulatory  
 5 scheme that Congress developed through the Energy Policy and Conservation Act of 1975. The  
 6 EPA and FTC enforce this regulatory scheme. The EPA sets forth an approved process for  
 7 calculating these fuel economy and EV range estimates. Once a manufacturer submits data for  
 8 review, the EPA must determine whether the data is "reasonable and representative," and may  
 9 accept it, require additional manufacturer testing, or perform its own confirmatory testing. The  
 10 EPA makes clear that such estimates may not predict the actual range of a vehicle. The FTC  
 11 requires manufacturers to use the EPA-approved range estimates for electric vehicles.

12                  Tesla complies with the EPA and FTC's regulatory scheme in the sale of its vehicles and  
 13 informs vehicle purchasers of the FDA-approved estimated driving range. Tesla's website, for  
 14 example, displays certain features for a given model Tesla vehicle **including** the EV "range," which  
 15 is explicitly identified as the "EPA est." (Am. Compl. ¶¶ 36–37.) Tesla also discloses that "the  
 16 vehicle's range estimates are an imperfect measure of Battery capacity because they are affected  
 17 by additional factors separate from Battery capacity." (*Id.* ¶ 106.) Various factors can impact a  
 18 vehicle's actual range, including "high driving speeds, cold temperatures, 'stop-and-go' traffic,  
 19 driving uphill, and inclement weather." (*Id.* ¶ 75.)

20                  Within five days after the publication of a *Reuters* article regarding alleged issues with  
 21 Tesla vehicles' driving range, Plaintiffs filed this putative class action.<sup>1</sup> This lawsuit should never  
 22 have been brought here. Each Plaintiff agreed to arbitrate his or her claims with Tesla on an  
 23 individual basis when he or she ordered the vehicle from Tesla. Tesla intends to move to compel  
 24 arbitration as to each Plaintiff.

25                  Plaintiffs' claims also lack merit. They bring an array of fraud-based and breach of  
 26 warranty claims. Each claim, however, is preempted. In addition, Plaintiffs fail to plead any false

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27                  1                  Plaintiffs filed an Amended Complaint on October 23, 2023. (ECF. No. 35.) The parties have  
 28 stipulated that Tesla shall have until November 22 to respond to Plaintiffs' Amended Complaint. (ECF  
 No. 31.)

1 statements or omissions made by Tesla to them, much less that they relied upon in making their  
 2 purchases. Nor does any Plaintiff allege that his or her car is inoperable, has a defect, or presents  
 3 a safety issue. As a result, Tesla intends to file an alternative motion to dismiss Plaintiffs' claims.

4 **C. Legal Issues**

5 The principal legal issues in dispute include:

- 6 a. Whether Plaintiffs' claims must be submitted to arbitration.
- 7 b. Whether Plaintiffs' claims are preempted by federal law.
- 8 c. Whether Plaintiffs' claims should be dismissed pursuant to Rule 12(b)(1), Rule  
   9 12(b)(6), and/or Rule 9(b).
- 10 d. Whether Plaintiffs' class allegations should be stricken, given the arbitration  
   11 agreements applicable to all named plaintiffs and other class members who did not  
   12 opt-out and disparities between the experiences alleged by named plaintiffs that  
   13 appear on the face of the complaint.
- 14 e. If Plaintiffs' claims survive Tesla's anticipated motion to compel arbitration and  
   15 motion to dismiss, whether a class may be certified.
- 16 f. Whether Plaintiffs are entitled to any damages, restitution, equitable relief, and/or  
   17 injunctive relief as alleged in Plaintiffs' FAC.

18 **D. Motions**

19 *Current Motions.* None pending.

20 *Anticipated Motions.*

21 *Plaintiffs' Statement*

22 Due to the fact-based inquiry required for a motion to compel arbitration, Plaintiffs believe  
 23 that some discrete discovery should be undertaken specific to the arbitration issue. Plaintiffs  
 24 disagree that their claims are preempted by federal law and will oppose a motion to dismiss.  
 25 Plaintiffs believe that because arbitration is a threshold issue, any merits-based motion to dismiss  
 26 should be stayed pending a determination of the motion to compel arbitration. Plaintiffs also  
 27 anticipate filing a motion for class certification.

28

1                   *Defendant's Statement*

2                   Plaintiffs have agreed to arbitrate their disputes with Tesla on an individual basis, and,  
 3 therefore, Tesla anticipates filing a motion to compel arbitration. No discovery is warranted,  
 4 appropriate, or necessary to resolve that motion. Tesla also anticipates filing a motion to dismiss;  
 5 Plaintiffs' allegations fail for lack of subject matter jurisdiction and for failure to state a claim  
 6 upon which relief can be granted because, among other issues, Plaintiffs' claims are preempted by  
 7 a comprehensive federal regulatory scheme governing fuel economy and driving range  
 8 calculations, testing, and disclosures. If the case proceeds past the anticipated motions and any  
 9 appeal, Tesla anticipates filing a motion for summary judgment and potentially a motion to deny  
 10 certification.

11           **E. Amendment of Pleadings**12           *Plaintiffs' Statement*

13           On October 23, 2023, Plaintiffs amended their Complaint. (FAC, ECF No. 35). At this  
 14 time, Plaintiffs do not intend to substantively amend the FAC to add or remove any claim or party.  
 15 However, Plaintiffs do intend to amend their claim for violation of the Massachusetts Consumer  
 16 Protection Act to seek damages following the expiration of the 30-day notice period pursuant to  
 17 Mass. Gen. Laws ch. 93A, § 9. In an effort to give notice of this claim to the Court and Tesla,  
 18 Plaintiffs included the claim in the FAC, but Plaintiffs intend to amend this claim only to seek  
 19 damages following the notice period, as required by Mass. Gen. Laws ch. 93A, § 9.

20           *Defendant's Statement*

21           Plaintiffs have already amended their Complaint and there is no need or basis for additional  
 22 amendments, including to try to seek relief pursuant to a flawed claim under the Massachusetts  
 23 Consumer Protection Act. Plaintiffs' claims should be arbitrated on an individual basis.  
 24 Moreover, Plaintiffs' claims are preempted and the other defects in Plaintiffs' claims cannot be  
 25 cured.

26           **F. Evidence Preservation**

27           The parties have reviewed the Guidelines Relating to the Discovery of Electronically  
 28 Stored Information ("ESI") and have met and conferred regarding reasonable and proportionate

1 steps taken to preserve evidence relevant to the issues reasonably evident in this action.

2 **G. Disclosures**

3 *Plaintiffs' Statement*

4 Due to the fact-based inquiry required for a motion to compel arbitration, Plaintiffs believe  
 5 that some discrete discovery should be undertaken specific to the arbitration issue, to aid the Court  
 6 in its determination whether to compel arbitration. Should such discovery be permitted, Plaintiffs  
 7 believe that initial disclosures be exchanged in accordance with the Federal Rules of Civil  
 8 Procedure.

9 *Defendant's Statement*

10 Tesla believes that any deadline for initial disclosures should be set only if this case  
 11 proceeds past the anticipated motions to compel arbitration and dismiss. Requiring the exchange  
 12 of initial disclosures would deprive Tesla of the benefit of its arbitration agreements with Plaintiffs,  
 13 which preclude the filing of this putative class action in the first instance. Any ruling denying  
 14 Tesla's anticipated motion to compel arbitration is also subject to an immediate appeal.  
 15 Accordingly, any initial disclosures are premature at this time.

16 Lastly, no discovery pertaining to arbitration-related issues is appropriate or warranted and  
 17 Plaintiffs offer no basis for it. Courts in this District repeatedly have granted motions to compel  
 18 arbitration under the same agreements at issue here and did so without any discovery.<sup>2</sup>

19 **H. Discovery**

20 Plaintiffs believe that discovery is appropriate in this case. Due to the fact-based inquiry  
 21 required for a motion to compel arbitration, Plaintiffs believe that some discrete discovery should  
 22 be undertaken specific to the arbitration issue, to aid the Court in its determination whether to  
 23 compel arbitration. Plaintiffs disagree that all discovery in this matter should be coordinated with  
 24 any discovery that takes place in the other related cases. For example, the *Corona* and *Zaks* cases  
 25 are not pleaded as proposed class actions and instead are pleaded as public injunction actions.

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26  
 27 <sup>2</sup> Within the last 45 days alone, this includes orders compelling arbitration in *Yeh v. Tesla, Inc.*, No.  
 28 23-cv-1704-JCS (N.D. Cal.) (ECF No. 52; October 12, 2023), *In re Tesla Advanced Driver Assistance  
 Systems Litig.*, No. 22-cv-5240-HSG (N.D. Cal.) (ECF No. 57; September 30, 2023), and *Lambrix v.  
 Tesla, Inc.*, No. 23-cv-1145-TLT (ECF No. 112; September 27, 2023).

1 Accordingly, discovery may differ among the cases and should not be coordinated in their entirety.  
 2 Plaintiffs, however, are not opposed to coordinating discovery with any discovery in the related  
 3 cases where possible to preserve efficiency.

4 Tesla disputes that any discovery is appropriate in this case and maintains its position that  
 5 Plaintiffs' claims belong in arbitration. Likewise, there is no basis to allow discovery "specific to  
 6 the arbitration issue." To the extent any discovery does take place in this action (over Tesla's  
 7 objection), it should be coordinated with any discovery that takes place in the other related cases.<sup>3</sup>  
 8 The information below is subject to and without waiver of Tesla's position:

9       a. *Discovery Taken to Date.* No discovery has been taken to date.

10      b. *Proposed Discovery Limitations.* At this juncture, there is no need to depart from  
 11 the limitations on discovery imposed under the Federal Rules of Civil Procedure and Northern  
 12 District of California Local Civil Rules of Civil Procedure.

13      c. *Stipulated E-Discovery Order.* If this case proceeds in this forum over Tesla's  
 14 objection, the parties anticipate filing an ESI stipulation based, in part, on the Northern District of  
 15 California's model Stipulation Regarding the Electronic Storage of Information, and proposed  
 16 order.

17      d. *Proposed Discovery Plan (Fed. R. Civ. P. 26(f)).*

18       i. Changes that should be made in the timing, form, or requirement for  
 19 disclosures under Rule 26(a), and a statement of when initial disclosures  
 20 were made or will be made.

21           Plaintiffs believe that initial Rule 26(a) disclosures should be  
 22 exchanged in accordance with the deadline contemplated by Rule 26.

23           Tesla believes that initial Rule 26(a) disclosures should only be  
 24 exchanged after the resolution of its anticipated motions and the exhaustion  
 25 of its right to appeal the denial of a motion to compel arbitration.

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26  
 27      <sup>3</sup> That includes: (1) *Alejandro Corona et al v. Tesla, Inc.*, Case No. 4:23-cv-03902-YGR (N.D.  
 28 Cal.) (filed August 3, 2023); (2) *Samuel Van Diest et al v. Tesla, Inc.*, Case No. 4:23-cv-04098-YGR  
 (N.D. Cal.) (filed August 11, 2023); and (3) *Irena Zaks et al. v. Tesla, Inc.*, Case No. 4:23-cv-05556-AGT  
 (removed on October 27, 2023).

ii. Subjects on which discovery may be needed, when discovery should be completed, and whether discovery should be conducted in phases or be limited to or focused on particular issues.

The parties believe that class certification and merits discovery should proceed at the same time.

Plaintiffs anticipate discovery may be needed on the following topics, without limitation to their ability to seek discovery on additional topics: Tesla’s design, manufacturing, sales, representations, advertising, labeling, and distribution of its vehicles; Tesla’s documents identifying purchases made by Class Members; Tesla’s documents regarding the design, manufacturing, testing, and updates of its vehicles including, but not limited to Tesla’s software and algorithm(s) which calculate the range of the vehicles; information regarding complaints and service appointments requested of Tesla or through Tesla’s app that regard a vehicle’s range or battery capacity; and information and documents regarding the creation and maintenance of Tesla’s “Diversion Team.”

If this case proceeds in this forum over Tesla’s objection, Tesla anticipates taking discovery on the merits of Plaintiffs’ claims, their inability to satisfy the Rule 23 requirements, and its anticipated affirmative defenses. This includes, for instance, discovery concerning Plaintiffs’ purchases of their Tesla vehicles; Plaintiffs’ operation, maintenance and use of their vehicles; Plaintiffs’ various arbitration and other agreements with Tesla; Plaintiffs’ previous and subsequent purchase of other Tesla vehicles; Plaintiffs’ communications, if any, with Tesla both before and after the purchase of their vehicle; Plaintiffs’ understanding regarding the battery range of the vehicles they purchased; the lack of any harm or damages to Plaintiffs; and why Plaintiffs are not adequate class representatives and cannot prove their claims on a class-wide basis.

iii. Any issues about disclosure, discovery, or preservation of electronically stored information (ESI), including the form or forms in which it should be produced.

The parties are not currently aware of any issues concerning the retrieval, disclosure, or discovery of ESI.

iv. Any issues about claims of privilege or protection as trial-preparation materials, including—if the parties agree on a procedure to assert these claims after production—whether to ask the court to include their agreement in an order under Fed. R. Evid. 502.

The parties are not currently aware of any issues about claims of privilege or protection as trial-preparation materials. If this case proceeds in this forum over Tesla’s objection, the parties anticipate filing a stipulated Protective Order, based, in part, on the Northern District’s court-approved model forms. The Protective Order includes a provision governing the inadvertent production of privileged or otherwise protected material. Therefore, an order under Fed. R. Evid. 502 is not needed.

v. Changes that should be made in the limitations on discovery imposed under the Federal or Local Rules, and other limitations that should be imposed.

At this juncture, the Parties do not believe there is a need to depart from the limitations on discovery imposed under the Federal or Local Rules.

vi. Any other orders the Court should issue under Rule 26(c) or 16(b) and (c).

The parties are not currently aware of any other orders the Court should issue at this juncture.

## I. Class Actions

## *Plaintiffs' Statement*

This case is pleaded as a class action, and Plaintiffs intend to file a motion for class certification. Plaintiffs bring this action under Fed. R. Civ. P. 23(b)(2) and 23(b)(3). Plaintiffs seek to represent:

1                   All persons in the United States who purchased from Tesla a  
 2                   Tesla Model 3, Model S, Model Y, or Model X.

3                   Plaintiffs Porter, Perez, and Estspanian bring this action on behalf of themselves and the  
 4                   members of a California class. Plaintiff Romanez brings this action on behalf of themselves and  
 5                   the members of a Florida class. Plaintiff Kupriets brings this action on behalf of themselves and  
 6                   the members of an Illinois class. Plaintiff Kreuzer brings this action on behalf of themselves and  
 7                   the members of a Massachusetts class. Plaintiff Nadir brings this action on behalf of themselves  
 8                   and the members of a New York class. Plaintiff Brown brings this action on behalf of themselves  
 9                   and the members of a Washington class.

10                  This action is properly maintained as a class action under Fed. R. Civ. P. 23(a) and (b)  
 11 because:

12                  *Numerosity*: Members of the classes are so numerous that joinder is impracticable.  
 13 While the exact number of class members is unknown to Plaintiffs, it is believed that the class  
 14 comprises thousands of members geographically disbursed throughout the United States.

15                  *Commonality*: There are questions of law and fact common to the class including,  
 16 but not limited to: whether Tesla model vehicles fail to deliver the advertised vehicle range in  
 17 normal driving conditions; whether Tesla exaggerated its advertised vehicle ranges; whether Tesla  
 18 knew the advertised vehicle ranges were exaggerated and could not be met under normal driving  
 19 conditions; when Tesla gained such knowledge; whether Tesla designed, manufactured, marketed,  
 20 advertised, sold, or otherwise placed its model vehicles into the stream of commerce with such  
 21 knowledge; whether Tesla intentionally concealed the fact that its advertised vehicles ranges were  
 22 exaggerated or otherwise could not be met under normal driving conditions; whether Tesla's  
 23 conduct to divert complaints violated the terms of Tesla's warranties; whether Plaintiffs and Class  
 24 Members were harmed by the fraud and deceptive practices in which they allege Tesla engaged;  
 25 whether Tesla was unjustly enriched by its deceptive practices; and whether Plaintiffs and Class  
 26 Members are entitled to equitable or injunctive relief.

27                  *Typicality*: Plaintiffs' claims are typical of the members of the proposed classes, as  
 28 all members of the classes are similarly affected by Tesla's conduct. Plaintiffs and Class Members

1 purchased their Tesla vehicles from Tesla based on similar, if not the same, representations and  
 2 advertising, such that Tesla's conduct giving rise to the claims is the same for Plaintiffs and all  
 3 Class Members.

4 *Adequacy:* Plaintiffs will fairly and adequately protect the interests of the classes  
 5 because they have no interests antagonistic to, or in conflict with, the classes that Plaintiffs seek  
 6 to represent. Furthermore, Plaintiffs have retained counsel experienced and competent in the  
 7 prosecution of complex class action litigation.

8 *Declaratory and/or injunctive relief:* Tesla has acted or refused to act on grounds  
 9 generally applicable to the classes, thereby making appropriate final injunctive relief or  
 10 corresponding declaratory relief with respect to all Class Members.

11 *Predominance:* The common questions outlined above predominate over any  
 12 individual questions because Tesla has acted or refused to act on grounds generally applicable to  
 13 the classes.

14 *Superiority:* It is impracticable to bring Class Members' individual claims before  
 15 the Court. Class treatment permits a large number of similarly situated persons or entities to  
 16 prosecute their common claims in a single forum simultaneously, efficiently, and without the  
 17 unnecessary duplication of evidence, effort, expense, or the possibility of inconsistent or  
 18 contradictory judgments that numerous individual actions would engender. The benefits of the  
 19 class mechanism, including providing injured persons or entities with a method for obtaining  
 20 redress on claims that might not be practicable to pursue individually, substantially outweigh any  
 21 difficulties that may arise in the management of this class action. Additionally, Plaintiffs know of  
 22 no difficulty to be encountered in this action that would preclude its maintenance as a class action.

23 At this time, Plaintiffs believe that both merits and class discovery can be completed in 18  
 24 months, and Plaintiffs would be prepared to bring a motion for class certification shortly after the  
 25 close of discovery.

26 *Defendant's Statement*

27 This case is pleaded as a class action. However, Plaintiffs waived their right to bring or  
 28 participate in a class action and agreed to arbitrate their claims on an individual basis when they

1 purchased their vehicles from Tesla. The other putative class members did the same, so no class  
 2 can be certified. In addition to this threshold problem, this case is not suitable for class treatment  
 3 because Plaintiffs cannot satisfy the requirements for class treatment under Rule 23.

4 **J. Related Cases**

5 The parties are aware of the following related matters including:

- 6 1. *Alejandro Corona and Cabanillas & Associates, P.C. v. Tesla, Inc.*, Northern  
     7 District of California, Case No. 3:23-cv-03902-YGR (filed August 3, 2023).
- 8 2. *Samuel Van Diest et al. v. Tesla, Inc.*, Northern District of California, Case No.  
     9 4:23-cv-04098-YGR (filed August 11, 2023).
- 10 3. *Irena and Gary Zaks v. Tesla, Inc.*, Northern District of California Case No. 4:23-  
     11 cv-05556-AGT (removed on October 27, 2023).

12 **K. Relief**

13 *Plaintiffs' Statement*

14 Plaintiffs seek an order certifying the proposed classes, and an order awarding actual,  
 15 statutory, and punitive damages, restitution, injunctive relief, pre- and post-judgment interest, and  
 16 the cost of the suit herein. Plaintiffs also seek attorneys' fees.

17 *Defendant's Statement*

18 Tesla disputes that Plaintiffs are entitled to pursue relief in this forum, or in any forum for  
 19 that matter.

20 **L. Settlement and ADR**

21 The parties have met and conferred in compliance with ADR Local Rule 3-5 and have not  
 22 yet engaged in any settlement discussions.

23 **M. Other References**

24 The parties do not believe this case is suitable for reference to a special master or the  
 25 Judicial Panel on Multidistrict Litigation.

26 **N. Narrowing of Issues**

27 The parties are not otherwise aware of any other issues that can be narrowed by agreement.  
 28 The parties currently have no suggestions to expedite presentation of evidence at trial.

1       **O. Expedited Trial Procedure**

2           The parties do not believe this is the type of case that can be handled under the Expedited  
 3 Trial Procedure of General Order No. 64, Attachment A.

4       **P. Scheduling**

5           *Plaintiffs' Statement*

6           Given that Tesla intends to bring a motion to compel arbitration and a motion to dismiss,  
 7 Plaintiffs believe that it is premature to enter a scheduling order at this juncture. Plaintiffs propose  
 8 that, following the Court's determinations on Tesla's forthcoming motions, the Parties meet and  
 9 confer and propose a joint scheduling order.

10          *Defendant's Statement*

11          Tesla does not believe that this case can proceed in this forum given Plaintiffs' arbitration  
 12 agreements. If its motion to compel arbitration is denied, Tesla anticipates that it will appeal,  
 13 which will automatically stay this litigation pursuant to the Federal Arbitration Act and *Coinbase, Inc. v. Bielski*, 599 U.S. 736 (2023). In addition, Tesla alternatively intends to move to dismiss  
 15 Plaintiffs' Complaint for lack of subject matter jurisdiction and failure to state a claim. As a result,  
 16 Tesla agrees with Plaintiffs that it is premature to enter a scheduling order at this juncture.

17          Nonetheless, to the extent the Court is inclined to do so, Tesla believes that class and merits  
 18 discovery can be completed in twelve months for this case and the other related cases. Tesla  
 19 proposes the following scheduling order:

Event	Proposed Date
Deadline to File Motion to Amend Pleadings	March 1, 2024
Expert Reports Due	November 1, 2024
Rebuttal Expert Reports Due	December 1, 2024
Deadline for Motion for Class Certification and MSJs	December 13, 2024
Deadline for Defendant to file Opposition to Class Certification Motion and for Oppositions to MSJs	January 28, 2025
Deadline for Plaintiffs to file Reply in Support of Class Certification Motion and Replies in Support of MSJs	February 27, 2025

1	Hearing on Plaintiffs' Motion for Class Certification and MSJs	March 24, 2025
2	Pretrial Conference	July 14, 2025
3	Jury and Court Trial <sup>4</sup>	August 10, 2025

4      **Q.    Trial**

5      *Plaintiffs' Statement*

6      Plaintiffs have demanded a jury trial. At this time, Plaintiffs are not in a position to estimate  
7      how many days a trial would last.

8      *Defendant's Statement*

9      If the Court denies Tesla's anticipated motions and this case proceeds in this forum over  
10     Tesla's objection, Tesla is entitled to a jury trial. The length of any trial will hinge upon what  
11     claims remain and whether any class is certified. At this juncture, Tesla estimates that any trial  
12     would last ten (10) court days.

13     **R.    Disclosure of Non-party Interested Entities or Persons**

14     Pursuant to Civil Local Rule 3-15, Plaintiffs state that, as of this date, other than the named  
15     parties, Plaintiffs are not aware of any entity or person with an interest to report.

16     Pursuant to Civil Local Rule 3-15, Defendant states that, other than the named parties,  
17     there is no conflict or interest to report.

18     **S.    Professional Conduct**

19     All attorneys of record for the parties have reviewed the Guidelines for Professional  
20     Conduct for the Northern District of California.

21     **T.    Other Matters as May Facilitate the Just, Speedy, and Inexpensive Disposition of the**  
22     **Matter**

23     The parties agree to electronic service of documents not filed through the Court's CM/ECF  
24     system.

25  
26  
27     <sup>4</sup>     If one or more of the related cases remains in the Court after the initial motion phase, Tesla  
28     proposes the parties discuss potential consolidation for trial purposes.



## **SIGNATURE ATTESTATION**

I hereby attest that, pursuant to N.D. Cal. Civ. L.R. 5-1(i)(3), the concurrence to the filing of this document has been obtained from each signatory hereto.

Dated: October 30, 2023

/s/ David L. Schrader

David L. Schrader